

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 34470 of 2004(C)

AGAINST THE ORDER DATED 23/09/04 IN IA.971/04 IN
OS.353/2000 of MUNSIFF'S COURT, THODUPUZHA

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PETITIONER:

JOHNSON MATHEW, S/O.MATHEW,
AGED 48, NELLIKUNNEL HOUSE, KADALIKKADU KARA,
NOW RESIDING AT PLANTATION JUNCTION,
KARIMKUNNAM.

BY ADV. SRI.K.C.CHARLES
SRI.C..MURALI

RESPONDENTS:

1. KRISHNAN POTTY, S/O.SANKARAN POTTY,
KAROTTUMADATHIL HOUSE, THODUPUZHA.

2. MARIYAMMA THOMAS, PLAKOOTTATHIL
HOUSE, THODUPUZHA.

R1 BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.P.P.THAJUDEEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC.34470/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF I.A.971/04 IN O.S.353/2000 OF MUNSIF, THODUPUZHA
DATED 3.6.04

EXT.P2 – TRUE COPY OF COUNTER AFFIDAVIT IN I.A.971/04 FILED BY R1 DT.31.7.04

EXT.P3 – TRUE COPY OF ORDER IN EXT.P1 I.A., DT.23.9.04

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.34470 OF 2004
.....

DATED THIS THE 8th AUGUST, 2007

J U D G M E N T

In a suit for specific performance of a contract for sale, serious dispute arose as to the genuineness of the handwriting and signatures relating to an endorsement made on the reverse side of the suit agreement. The endorsement was to the effect that a sum of Rs.35,000/- which had been advanced by the petitioner was returned to him. The instant application was filed by the petitioner for forwarding the agreement to a forensic expert for a report after comparing the admitted signatures on the agreement with the disputed signatures on the reverse side of the agreement. The learned Munsiff noticed that there was considerable delay in the matter of filing the application. The learned Munsiff also noticed that the petitioner had not complied with the direction that specimen signatures of the relevant period should be produced. The learned Munsiff was not prepared to accept the claim of the petitioner that the Forensic Science Laboratory, Thiruvananthapuram to which the document was sought to be forwarded will be able to file their report within two to three months. The learned Munsiff found, obviously from his own experience, that the Forensic Science Laboratory will take three to four

years for submitting their reports.

2. I have heard the submissions of Sri.K.C.Charles, counsel for the petitioner and Sri.T.A.Unnikrishnan, counsel for the 1st respondent.

3. Mr.Charles submitted that concededly the 1st respondent has already sold the property to the 2nd respondent and that the 1st respondent may not any longer be an interested party. It was the 1st respondent alone who filed counter affidavit before the court below. The 2nd respondent had not filed counter affidavit before the court below nor has that respondent entered appearance before this Court. Mr.Charles would flay the impugned order on the basis of the various grounds raised. Mr.Charles submitted that competent private experts are available and they will be able to submit reports within a time-frame as short as six months. The submission of Mr.Charles is that the learned Munsiff was not justified in insisting on production of admitted signatures pertaining to the relevant period since there are admitted signatures on the agreement itself. It was only an endorsement on the reverse side which was in dispute. All other signatures were admitted, submitted the learned counsel.

4. Mr.T.A.Unnikrishnan, counsel for the 1st respondent would submit that the obvious object in filing the application is to delay the

trial and disposal of the suit further. The petitioner could have filed the application as soon as the written statement was filed or at least when the case was posted for pre-trial steps, submitted the learned counsel.

5. Having considered the rival submissions, I am inclined to agree with Mr.Charles in his submission that for resolving the issue in the suit, the best evidence will be the report on the basis of a forensic scrutiny of the document. I do agree with the learned Munsiff and Mr.T.A.Unnikrishnan that there was considerable delay on the part of the petitioner in filing the application. But, at the same time, I do not think that this Court will be justified in awarding costs to the 1st respondent who has ceased to have any interest in the property.

6. I set aside the impugned order and allow I.A.No.971 of 2004 on condition that the petitioner pays a sum of Rs.500/- by way of costs to the High Court Legal Services Authority within three weeks from today. Once the cost is paid and the order allowing the I.A. becomes operative, the learned Munsiff will permit both sides to submit panels containing the names of private experts. The court below will appoint one expert from out of the panels submitted by the parties. The entire expenses to be incurred in connection with the forensic scrutiny of the

document in question will be borne by the petitioner irrespective of the result of the suit. In other words, the expenses incurred in the context of the present I.A. will not be part of the ultimate costs of the suit. The learned Munsiff will issue appropriate directions to the expert so as to ensure that the report is received at the earliest. Once the report is received, the suit will be special-listed for trial and disposed of at the earliest.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

tgl

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